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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 CR 34 (RMB)

5 DINESH D'SOUZA,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 November 24, 2014  
12:05 p.m.

10 Before:

11 HON. RICHARD M. BERMAN

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 CARRIE COHEN

PAUL KRIEGER

Assistant United States Attorneys

18 BENJAMIN BRAFMAN

19 ALEX SPIRO

Attorneys for Defendant

20  
21 ALSO PRESENT:

22 BRETT HALEM, U.S.P.O. SDNY

23 KATHY SCHWARTE, U.S.P.O. California (by telephone)

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(In open court)

THE COURT: Mr. Brafman, I'm actually surprised to see Mr. D'Souza present. I thought we had waived his appearance on the last --

MR. BRAFMAN: We did waive his appearance. I discussed it with Mr. D'Souza. He made the decision that coming here personally would be an added measure of respect for the Court who was very understanding in the sentence imposed so he made the decision at his own expense to come here and now he's going right back. But it was optional. He understood that. But, to his credit, he came.

THE COURT: So we have on the phone.

MS. SCHWARTE: This is Kathy Schwarte with probation in San Diego.

THE COURT: So Ms. Schwarte, I have your letter dated November 20, 2014. And I think it's self-explanatory. There is one part of it that I didn't quite understand, which I'll get to. But why don't you tell us what the progress is, Mr. D'Souza is making, with respect to his sentence.

MS. SCHWARTE: Okay, your Honor. Everything is moving along fine. I have no concerns at all. He did complete the psychiatric assessment with Dr. Gould and no further psychiatric treatment or medication is recommended. He does continue with his weekly counseling with Dr. Marshall. I believe he's had eight sessions with her. And she expressed

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1 that he is compliant and comes with a positive and open  
2 attitude. He is doing the community service as ordered as  
3 well. He's completed five weeks there, off one week for  
4 Veterans Day.

5 THE COURT: I'm sorry. They're off what?

6 MS. SCHWARTE: That was one issue I did want to  
7 address with your Honor. They will be off I think it's two  
8 weeks for Christmas. They're off the Monday for Martin Luther  
9 King Day coming up. I just want to make sure that's okay with  
10 your Honor, that he does not complete the community service  
11 when the school is closed.

12 THE COURT: So what is the school?

13 MS. SCHWARTE: But he is moving along with that well.

14 THE COURT: Ms. Schwarte, what is the school?

15 MS. SCHWARTE: At the halfway house they have no  
16 concerns at all. And those are the big issues. He's been very  
17 communicative with me. And I have no concerns at this time.

18 THE COURT: Can you hear me?

19 MS. SCHWARTE: You're faint, your Honor, but I can.

20 THE COURT: Well so one question I have is what is the  
21 school that you referred to?

22 MS. SCHWARTE: I'm sorry, your Honor. He's teaching  
23 the English classes to the immigrants at catholic schools -- I  
24 believe one is like a church that has a class in it and the  
25 other one is a school. And they're affiliated. So they close

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1 for -- between semesters or just holiday breaks so that was  
2 what I was referring to.

3 THE COURT: So I think -- I don't know what you mean  
4 by discretion but I would like there to be make-ups of the  
5 community service so that we can have actual compliance with  
6 the judgment which imposes the sentence which calls for weekly  
7 community service. Do you know what I mean?

8 MS. SCHWARTE: I do know what you mean, your Honor.

9 THE COURT: So that's what I want to have done.

10 MS. SCHWARTE: Teaching non-English speaking  
11 immigrants. And if the school where he has those classes,  
12 because that -- it was initially a little bit of a struggle to  
13 find that specific class and he was able to find that. But if  
14 the school does not have sessions --

15 THE COURT: I understood you.

16 MS. SCHWARTE: -- for a week --

17 THE COURT: Ms. Schwarte.

18 MS. SCHWARTE: -- community service to do in a  
19 different place. But I it would be really hard for it to be  
20 that specific order that -- the teaching English to immigrants.

21 MR. BRAFMAN: Your Honor, may I make a suggestion,  
22 sir?

23 THE COURT: No. Not yet.

24 So, Ms. Schwarte I'm having a little trouble hearing  
25 you.

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1 MS. SCHWARTE: I'm sorry.

2 THE COURT: No. No. I think I did hear you but I  
3 want you to hear me. So I expect compliance with the judgment.  
4 The judgment calls for weekly community service. So that's  
5 what I expect to see. And so to the extent that you're seeking  
6 discretion not to comply with the judgment I am not granting  
7 you that discretion.

8 MR. BRAFMAN: Your Honor, if I may?

9 THE COURT: Do you understand?

10 MS. SCHWARTE: I do, your Honor.

11 MR. BRAFMAN: Your Honor, if I may make a suggestion,  
12 sir?

13 THE COURT: Yes.

14 MR. BRAFMAN: We are not seeking to shorten the period  
15 of community service.

16 THE COURT: I know, Mr. Brafman.

17 MR. BRAFMAN: We can make it up.

18 THE COURT: This is not an issue really that I have  
19 with you. So this is -- this is something I'm trying to  
20 clarify between myself and the probation officer.

21 MR. BRAFMAN: Yes. But I have a suggestion.

22 THE COURT: Just a minute. So it has to do with when  
23 there's a judgment I expect it to be complied with. That's not  
24 entirely, from your point of view I do expect compliance, no  
25 question. But that's really between me getting clear with the

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1 probation department because she has asked in her letter for  
2 some discretion in that regard. And I'm responding to that  
3 question.

4 MR. BRAFMAN: But, your Honor, if I may, we're only  
5 struggling with the issue because the schools are closed during  
6 this period. What we would like to suggest -- it's almost  
7 impossible to find another school that will be open during that  
8 period. So what I am suggesting is that we comply with the  
9 complete sentence by tacking on sessions at the end of what  
10 would normally be the end of the period of community service so  
11 that you get the full measure of compliance and no one is  
12 exercising discretion he can't show up at a school that's  
13 closed.

14 THE COURT: So that is a solution that is pretty much  
15 what I said before, so make-ups. So does it have to be on  
16 Christmas Eve? Obviously not, Mr. Brafman. Does it have to be  
17 on Thanksgiving Day? Obviously not. So just a little common  
18 sense has to be applied here.

19 MR. BRAFMAN: We will work it out with probation so  
20 that --

21 THE COURT: I'm sure you will.

22 MR. BRAFMAN: So that you will have full compliance  
23 with the sentence you imposed.

24 THE COURT: I'm sure you will. The same is true with  
25 therapeutic counseling. I don't know exactly what it means

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1 someone is on vacation, whatever; but there are make-ups there  
2 too. So I just want to make sure that there is compliance with  
3 the judgment. Simple as that. I'm glad things are going well  
4 otherwise.

5 Mr. D'Souza how do you like the teaching?

6 THE DEFENDANT: Your Honor, I like it very much. I  
7 teach both beginner, intermediate, and advanced English. I  
8 love the people. I'm happy to do it. And I'm enjoying it very  
9 much. I find it very gratifying and helpful.

10 THE COURT: Who are the students by and large?

11 THE DEFENDANT: They are mostly adults and they range  
12 in ages from the 20s to the 60s. They are mainly women but  
13 there's a fair amount of men. And then there are multiple  
14 different classes. I co-teach it with another teacher. We do  
15 it jointly. And she is a native Spanish speaker. So it works  
16 very well.

17 THE COURT: Is -- are most if not all of the students  
18 Spanish speaking as their first language or there are other  
19 first languages as well?

20 THE DEFENDANT: As far as I can tell it's all Spanish.  
21 In San Diego, so it's a border city. So it's all Spanish to  
22 English.

23 THE COURT: Okay. All right. Ms. Schwarte, anything  
24 else that you want to raise?

25 MS. SCHWART: No, not at this time. Thank you, your

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Honor.

THE COURT: Anybody here want to raise?

MS. COHEN: Nothing from the government, your Honor.

MR. BRAFMAN: I just have a request, your Honor.

THE COURT: Sure.

MR. BRAFMAN: I agree that the Court keeping control of the matter and from time to time getting updates. I would simply ask that if your Honor would consider that you receive periodic written updates from Ms. Schwarte, that unless and until an issue arises that causes you concern that we not be required to appear in person although if you request it we obviously will.

THE COURT: So it's really part of the way I do things not just in this case but in virtually every case where there's supervised release or probation. It's something I've learned to do in -- back in family court. I think it's generally desirable. I want to make it very clear that Mr. D'Souza does not need to -- I know that he has respect for the Court. He does not need to be here unless there's a problem, but for the lawyers and for the government and defense and me, you know, we're all around the corner, so to speak. And so I do think it's a good idea to get these updates and, as now, there's a question Ms. Schwarte had raised so I'm happy to resolve questions. If the reports are always good, then they will be short conferences as this one has been. But I do like to



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1 conduct these conferences.

2 So let me give you a proposed date.

3 (Pause)

4 So if you all are available I would propose the next  
5 date with Ms. Schwarte and the lawyers, but understanding that  
6 Mr. D'Souza does not need to be here, for March 2, 2015 at  
7 11:30 eastern time.

8 MS. COHEN: Fine with the government, your Honor.

9 THE COURT: Mr. Brafman, does that work?

10 MR. BRAFMAN: Yes, your Honor.

11 The only caveat it's also out of respect for the  
12 court. I'm scheduled to be on trial in Trenton for the month  
13 of February. It should be over by then. If not, I will make  
14 certain that either Mr. Spiro or another lawyer is present.

15 THE COURT: That would be great. Thanks very much.  
16 Glad to see you all. Wish you a happy holiday.

17 (Adjourned)